

Attorney Docket No. 10123/04001 (03-318)

REMARKS

Claims 1 - 18 remain pending in the present application. In view of the following remarks, it is respectfully submitted that all of the presently pending claims are allowable.

Claims 1 - 18 stand rejected under 35 U.S.C. § 102(b) as anticipated by Johnson (U.S. Patent No. 5,989,216).

Claim 1 recites an access port comprising a septum including an operative surface covering an opening of a housing and an attachment portion for securing the septum to the housing and further including "an annular surface extending radially beyond a periphery of the operative surface and separated from the operative surface in a direction substantially perpendicular to the annular surface, *the annular surface being coupled to the operative surface by a chamfer which, when the septum is mounted within the housing, is subject to a force oriented substantially perpendicularly with respect to the annular surface, the chamfered portion redirecting a portion of the force to compress the operative surface in a direction substantially parallel to the annular surface.*"

Similarly, claim 12 recites a septum comprising an "attachment portion including an annular surface" and an operative surface having a periphery "radially within a periphery of the annular surface" and "*a chamfered portion providing a transition between the attachment portion and the operative surface, the chamfered portion re-directing a component of a force applied to the chamfered portion to compress the operative surface.*"

In contrast, the septum 122 of Johnson comprises an uppermost surface, which the Examiner analogizes to the recited operative surface and a lower unnumbered portion, which the Examiner analogizes to the recited annular surface of the attachment portion. (See 4/8/08 Office Action, pp. 2 - 4) The Examiner then analogizes the curved portion "with a substantially constant radius of curvature" to the recited "chamfered portion *providing a transition between the attachment portion and the operative surface,*" as recited in claim 1. (*Id.*). Initially, it is

Attorney Docket No. 10123/04001 (03-318)

submitted that the rounded portion the Examiner is referring to projects out of the housing 120 and is therefore incapable of being "subject to a force oriented substantially perpendicularly with respect to the annular surface, the chamfered portion redirecting a portion of the force to compress the operative surface in a direction substantially parallel to the annular surface," as recited in claim 1. The Examiner has affirmed this notion by indicating that the rounded portion of the septum 122 is "not fully completely enclosed by the housing." (See 4/8/08 Office Action, p. 2). However, it is further submitted that no part of the rounded portion of the septum 122 is received within the housing *at all* and it is unclear on what the Examiner has relied in support of his interpretation otherwise. Only the straightened side walls of the septum 122, which the Examiner analogizes to the "attachment portion" of claim 1 are received within the housing 120. (See Johnson, col. 5, lines 57 - 60; Figs. 10, 11). In addition, it is submitted that Johnson is directed only to septa that are non-compressively held in housings. (*Id.* Col. 4, lines 49 - 65). Furthermore, in order to function as claimed the septum of Johnson would have to be modified so that, in addition to this rounded portion, a second rounded edge would be needed to obtain the desired projection of the septum from the housing as shown in every figure. Nothing in Johnson shows or suggests such a septum. In fact, in view of the focus of this application on non-compressively held septa it is submitted that Johnson actually teaches away from such a modification.. By virtue of its positioning external to the housing 120, it is submitted that the so-called chamfer of Johnson is incapable of receiving a compressive force and does not meet the limitation of being "subject to a force oriented substantially perpendicularly with respect to the annular surface," as recited in claim 1. It is therefore submitted that claim 1 and its dependent claims 2 - 11 are allowable over Johnson for at least this reason.

Furthermore, it is submitted that Johnson fails to teach a septum showing any specific behavior when subject to a compressive force as Johnson describes only non-compressively held septa. Specifically, Johnson discloses that the septum 122 is held in place in the housing 120 by being shoehorned in as shown in Fig. 8 or being dropped in as shown in Fig. 9, the septum being bonded to the housing 120 with an adhesion promoter and not through any compressive forces on the septum. (See Johnson, col. 7, ll. 10 - 20; Figs. 8 - 11). Johnson goes on to state that neither the housing 120 nor any other components exert forces across the entire vertical dimension of the septum. (*Id.*). It is therefore submitted that Johnson fails to teach or suggest "a chamfer which, when the septum is mounted within the housing, is subject to a force oriented substantially perpendicularly with respect to the annular surface, *the chamfered portion*

Attorney Docket No. 10123/04001 (03-318)

redirecting a portion of the force to compress the operative surface in a direction substantially parallel to the annular surface,” as recited in claim 1 and actually teaches away from such an embodiment.

Still further, it is respectfully submitted Johnson does not disclose or define a chamfer portion therein and that the Examiner’s rejection is improperly based on speculation and a hindsight reconstruction of the invention. Johnson neither shows nor suggests “a chamfer which, when the septum is mounted within the housing, *is subject to a force oriented substantially perpendicularly with respect to the annular surface*, the chamfered portion redirecting a portion of the force to compress the operative surface in a direction substantially parallel to the annular surface”, as recited in claim 1 and that claim 1 and its dependent claims 2-11 are therefore allowable over Johnson for at least these additional reasons.

For the same reasons it is respectfully submitted that Johnson neither illustrates nor describes a septum having “a chamfered portion providing a transition between the attachment portion and the operative surface, the chamfered portion re-directing a component of a force applied to the chamfered portion to compress the operative surface,” as recited in claim 12. It is therefore respectfully submitted that claim 12 is not anticipated by Johnson and that claim 12 and its dependent claims 13-18 are also allowable.

Claims 1 and 12 stand rejected under 35 U.S.C. § 102(b) as anticipated by Wiita (U.S. Patent No. 4,772,270) or Bark (U.S. Patent No. 4,904,241). In support of the rejection, the Examiner notes that the “elements disclosed in Wiita and Bark are fully capable of satisfying all structural, functional, spatial, and operational limitations in the amended claims”. (See 9/24/07 Office Action, p. 4).

Wiita purports to show a port 10 having a septum 70 comprising a top surface 76 and an annular ring 72 connected to the top surface 76 via a portion of the septum 70 abutting an annular surface 26. (See Wiita, col. 5, li. 65 - col. 6, li. 13; Fig. 2). It is submitted that Wiita does not teach or suggest a chamfered portion “providing a transition between the attachment portion and the operative surface,” as recited in claim 1. Rather, the septum of Wiita includes what appears to be a substantially planar annular surface extending radially outward from the central operative portion. The Examiner has previously contended that the shoulder 24 of the

Attorney Docket No. 10123/04001 (03-318)

Wiita device is comparable to the recited chamfer portion. However, it is noted that the shoulder 24 of Wiita is designated as an inner wall of the port 10 and does not constitute a chamfer formed *on the septum*. (See Wiita, col. 4, li. 68 – col. 5, li. 4). If the Examiner intended to refer to the portion of the septum 70 abutting the shoulder 24, this reference would also be insufficient as this portion is designated as the annular ring 72, which the Examiner has compared to the “attachment portion” of claim 1. (See 9/24/07 Office Action, p. 4). That is, the same element can not serve as the attachment portion and as a separate element (the chamfered portion) “providing a transition between the attachment portion and the operative surface,” as recited in claim 1.

Furthermore, it is respectfully submitted that the septum of Wiita includes no portion which, when mounted within a housing, “*is subject to a force oriented substantially perpendicularly with respect to the annular surface, the chamfered portion redirecting a portion of the force to compress the operative surface in a direction substantially parallel to the annular surface*”, as recited in claim 1. Nothing in Wiita describes such a surface nor is any surface of the Wiita septum capable of redirecting force in this manner. This portion of the septum is not capable of receiving a “*force oriented substantially perpendicularly with respect to the annular surface*” and “*redirecting a portion of the force to compress the operative surface in a direction substantially parallel to the annular surface*,” as recited in claim 1. Rather, this annular portion receives only forces parallel to the annular surface. Accordingly, it is submitted that Wiita fails to teach or suggest a chamfer portion “*which, when the septum is mounted within the housing, is subject to a force oriented substantially perpendicularly with respect to the annular surface, the chamfered portion redirecting a portion of the force to compress the operative surface in a direction substantially parallel to the annular surface*,” as recited in claim 1 or “*a chamfered portion providing a transition between the attachment portion and the operative surface, the chamfered portion re-directing a component of a force applied to the chamfered portion to compress the operative surface*,” as recited in claim 12. It is respectfully submitted that claims 1 and 12 are therefore allowable over Wiita.

Bark purports to show a septum 10 comprising a needle penetrable seal member 34 having a reduced peripheral section 36 disposed on an inclined support surface 18 of the needle stop member 12. (See Bark, col. 3, ll. 56 - 58; col. 4, ll. 12 - 22; Fig. 2). The Examiner contends that the chamfer portion of the Bark device is defined by a portion lying near 36 and that the

Attorney Docket No. 10123/04001 (03-318)

attachment portion is defined by a portion near support surface 18. (See 9/24/07 Office Action, p. 4). Initially, it is noted that the portion lying near 36 comprises a peripheral edge portion of the septum 10, wherein the reduced peripheral section 36 is in direct contact with the support surface 18. Accordingly, it is respectfully submitted that Bark fails to show a chamfer portion near reduced peripheral section 36 and an attachment portion lying near support surface 18 as the support surface 18 comprises the portion of the Bark housing that houses the reduced peripheral section 36 and the area lying near the reduced peripheral section 36 and the support surface 18 may not be properly designated as two separate components. In any case, these elements are all on a continuous inner surface of the septum and do not provide *“a transition between the attachment portion and the operative surface, the chamfered portion re-directing a component of a force applied to the chamfered portion to compress the operative surface,”* as recited in claim 1. That is, claim 1 recites *“an annular surface extending radially beyond a periphery of the operative surface and separated from the operative surface in a direction substantially perpendicular to the annular surface.”* The surface 18 cannot form both the annular surface and the operative surface and it is unclear how the surface 18 could provide a transition from the peripheral section 36 and the surface 34 -- the surface 18 simply extends between opposite ends of the section 36 and never contacts the surface 34.

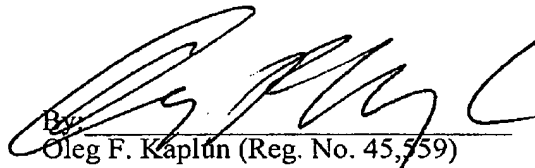
Furthermore, Bark never discusses or suggests a chamfer which, when subject to a force oriented substantially perpendicularly with respect to an annular surface, redirects *“a portion of the force to compress the operative surface in a direction substantially parallel to the annular surface,”* as recited in claim 1 or *“a chamfered portion providing a transition between the attachment portion and the operative surface, the chamfered portion re-directing a component of a force applied to the chamfered portion to compress the operative surface,”* as recited in claim 12. Nor is any surface or structure of the septum of Bark suitable for a redirection of force as claimed. Accordingly, it is submitted that claims 1 and 12 are allowable over Bark.

Attorney Docket No. 10123/04001 (03-318)

In light of the foregoing, Applicants respectfully submit that all of the pending claims are in condition for allowance. All issues raised by the Examiner having been addressed, and an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

Dated: May 30, 2008


By: Oleg F. Kaplun (Reg. No. 45,559)

Fay Kaplun & Marcin, LLP
150 Broadway, Suite 702
New York, NY 10038
Tel: (212) 619-6000
Fax: (212) 619-0276